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PETITIONER'S REPLY BRIEF

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 697

WILLIAM C. McDOUGALL,

Petitioner,

v.

UNITED STATES CIVIL SERVICE COMMISSION,
Individually and Officially, Etc.

WILLIAM C. McDOUGALL,
Petitioner, Pro Se.

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The discussions here presented pertain to Brief for Respondents in Opposition to Petition for a Writ of Certiorari, and references in said Brief for Respondents in Opposition relating to Petitioner's service in the Army in 1918, wherein it appears said references are not fully substantiated by the certified copies of the official army records filed November 8, 1951 in the District Court below and attached to affidavit of Joseph Kovner, Esq., Attorney, Department of Justice (R. 36A to 43A, inc.), and copy of Petitioner's Discharge from Draft (R. 6A, 7A, 9A).

1. In Note 1, page 3 of Brief of Respondents in Opposition to Petition for a Writ of Certiorari, it is stated as follows:—

> "Petitioner's request that he be issued a 'Discharge from Military Service' in lieu of the 'Discharge from Draft' was denied by the Army Board on Correction of Military Records on November 8, 1950 (R. 38A-44A)."

On November 8, 1950, over the signature of John J. Donovan, Colonel, AGO Commanding (R. 43A) a "Hearing" was denied in connection with the request for correction of Army records.

In connection with the above John H. Sullivan, Commissioner of Veterans' Cases filed a Report and Opinion of the Commissioner on Opposing Motions for Summary Judgment. Same was filed on January 16, 1952 in the District Court below and he states in his opinion (R. 54A, top of page) as follows:

> "In exhausting all administrative remedies available to plaintiff, it is to be noted that he sought the statutory correction of his discharge from draft but was denied the hearing provided by the statute because the Department of the Army was of the opinion that he had not tendered sufficient reasons for such hearing. Defendant's Exhibit No. 3. The *hearing* was denied; not his petition for correction of discharge". (emphasis by the Commissioner).

2. In Note 3, page 5 of Brief of Respondents in Opposition references are made to Selective Service Regulations 174, 177 and 178.

In connection with the above the Petitioner directs attention to the *absence* from Archivist Records of any

Form 1029 as provided for by Section 174, Selective Service Regulations. Said *absence* is shown in Report dated September 7, 1950, The National Archives, War Records Branch (R. 37A and 38A) which states under numbered paragraph "4" on R. 38A as follows:

> "4. No PMGO Form 1029 with this man's name on it was found".

The Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases, which is an exhaustive consideration of all the pertinent and material matter, states the following relative to the missing Forms 1029: (R. 51A)

> "At this point it is worthy of note that the regulations involved here require Form 1029 (A & B) must be retained by the adjutant at the mobilization camp until final rejection or acceptance of the man concerned, such as plaintiff here. Form 1029(A) must then be completed and mailed to the Provost Marshal General. In Defendants' Exhibit No. 1, the Archivist reports that no such forms 1029 are found in the Archives with plaintiff's name on. Section 166, 1918 Regulations pp. 145, 146"

The Commissioner continues as follows: (R. 51A)

> "Section 166, supra, pertinently provides: Acceptance or rejection must be determined and both cards placed in the mail within 15 days of the date of registrant's induction into service, as indicated on Form 1029 A, except in exceptional cases of illness, when (page R. 52A) Forms 1029 A and B may be held for 30 days. This is the extreme case. *Ordinarily cards should be mailed within a few days*

after the receipt thereof". (emphasis by the Commissioner)

The Commissioner continues as follows: (R. 52A)

"No illness of plaintiff is on record, so 30 days as provided in regulation is not applicable. His physical examination report made at mobilization camp shows nothing that was not on the local draft board physical examination report. As there is no record of any such Form 1029 in Archives, the only basis for the action of the Army is contained in the discharge itself, a Discharge from Draft. On the forward side of this discharge, it is stated that plaintiff was discharged from the military service of the United States by reason of loss of index finger right hand and defective vision. There is nothing out of the ordinary shown here that did not appear on the local draft board records, and on the record of appeal therefrom. The circumstances show that in the case at bar, Form 1029 cards concerning plaintiff, should have been mailed within a few days after his arrival at mobilization camp, because plaintiff in all probability was finally accepted by the Army prior to the bayonet-training incident, supra. It was incumbent upon the mobilization camp adjutant, under the regulations, to see to it that the Army records at that time included Forms 1029 A and Form 1029 C, or, under the circumstances, both forms, but, whether he did or did not perform this duty, the records of the Army are now barren of such material, so pertinent to the question of whether plaintiff was actually on active duty in any branch of the armed forces of the United States. (Section 305, p. 254)"

The "bayonet-training" incident above referred to is mentioned in the Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases (R. 48A) as follows:

> "One thing stands out as indicative of the allegation that he was definitely accepted for active military service as a 'chosen' one of selectees. In bayonet practice and instruction, a sergeant discovered through the usual push and pull on inductee's rifle that something was seriously wrong with plaintiff's grasp on rifle. The sergeant noticed the missing index finger. Two days later, plaintiff was discharged. It seems reasonable from experience that plaintiff had been accepted for full military duty but that, after the action of the drill sergeant, his physical condition status was reopened. It was then determined as *not fit for combat duty status.*" (emphasis by the Commissioner)

3. Statement of Respondents in Brief for Respondents in Opposition, on pages 2 and 3, allege Petitioner's service was for the period of thirteen (13) days.

The "Discharge from Draft" – dated June 28, 1918 at Camp Humphreys, Va. as shown on its face (R. 7A). However, on reverse side of said Discharge shown as Plaintiff's Exhibit "One" (Part 2) in the Transcript of Record (R. 9A) it is also shown, "Paid in Full (stamp) Jul. 1, 1918". The total service is seventeen (17) days computing date of induction and entrainment on June 15, 1918 up to and including date he was paid off and left Camp Humphreys, Va. on July 1, 1918.

It is therefore apparent the Petitioner was in training at Camp Humphreys, Va. in excess of 15 days, within

which period his acceptance or rejection must have been determined under the 1918 Regulations, Section 166, as more fully set forth in Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases, *supra*.

The entire Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases (R. 45A to 57A, inclusive) is respectfully referred to as pertinent and material to all questions of law and fact in this proceeding.

Respectfully submitted,

WILLIAM C. MCDOUGALL,
Petitioner, Pro Se.

Encl